LIBRARY
SUPREME COURT U.S.

Office-Supreme Court, U.S.
FILED
OCT 1 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964

No. 285

JACK BAER, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY BRIEF

ALAN MILES RUBEN
Counsel for Petitioner

1532 Bankers Securities Building
Philadelphia, Pennsylvania 19107

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 19104

IN THE

Supreme Court of the United States

October Term, 1964

No. 285

JACK BAER, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

REPLY BRIEF FOR PETITIONER

ARGUMENT

I. THE 1955 PROTOCOL BETWEEN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY HAD NO BEARING WHATSOEVER UPON THE ACCRUAL OF PETITIONER'S CLAIM FOR THE CONFISCATION OF HIS PROPERTY BY THE UNITED STATES.

Did the purportedly temporary suspension by the United States of Petitioner's right to collect the debt owed him by a German national become a permanent taking more than six years prior to the institution of the present action? The Government insists that the Statute of Limitations has run but is uncertain as to the event or date which started the statute ticking.

The latest theory advanced by the Government is that the West German Protocol of May 5th, 1955 (6 U. S. T. 4251) insulates the United States from liability. But the Protocol nowhere intimates that the United States will not conclude a final settlement of post-war claims; much less does it suggest that the partial payments permitted on German external post-war debts would constitute payment in full. The Protocol expressly provides to the contrary. Therein the United States required that legislation enacted by the Occupation Authorities was to remain in force unless and until repealed by the German Federal and Land Authority. CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND THE OCCUPATION, Ch. 1, Art. 1, 6 U.S.T. 4412. No. federal legislation has repealed the provisions of Allied High Commission Law No. 46 of January 25, 1951, (which amended United States Military Government Law No. 63 of June 26, 1948), prohibiting repayment of German post-war external debts.

II. PETITIONER'S ACTION FOR THE CONFISCATION BY THE UNITED STATES OF A POST-WAR DEBT OWED TO HIM BY A GERMAN NATIONAL CLEARLY SETS FORTH A MERITORIOUS AND COMPENSABLE CLAIM UNDER THE FIFTH AMENDMENT.

Cut off from all beneficial use of his funds in Germany by United States Military Government Regulations, Petitioner lent his brother Sigbert 880,000 Reichsmarks in 1946. This debt constituted Petitioner's property in the American Zone of Occupation, *Standard Oil Company v. New Jersey*, 341 U. S. 428 (1951), with a value of $352,000 in United States currency. *Thorington v. Smith*, 75 U. S. 1, 13-14 (1868). Although an intangible chose-in-action, the property was no different in legal contemplation than a parcel

of land or an article of furniture, and entitled to precisely the same constitutional protection against confiscation. *Brown v. United States* 17 U. S. 110, 124 (1814).

The failure of the United States for seventeen years to make "final settlement" of German external post-war debts —those arising before June 21, 1948,—and meanwhile to continuously deprive Petitioner of the right to collect his claim has now resulted in the taking of his property.

The "fact" which has occurred within the past six years prior to the filing of the instant complaint is the expiration of a reasonable period of time without the termination of these so-called temporary restrictions. What was once called "temporary" has now ripened to that permanency which allows Petitioner to contend that his property has been "taken".

The United States has made it impossible for Petitioner to enforce his claim and thereby destroyed the value of the debt owing to him. Such destruction "took" the property value of the debt within the meaning of the Fifth Amendment. *Armstrong v. United States* 364 U. S. 40, 49 (1960); *United States v. General Motors* 323 U. S. 373, 378 (1945).

III. The Solicitor General Errs; Petitioner's Loss Was Occasioned by Confiscation of His Debt and Not by Currency Regulation.

The Solicitor General mistakenly assumes that Petitioner's claim arises as a result of a currency reform or revaluation.

But the so-called monetary reform laws of 1948 had no application to the Petitioner. They provided for the replacement of the Reichsmark as the unit of German cur-

rency by the Deutchemark [1] and for the settlement of German *internal* debts according to a sliding scale based upon the character of the obligations. The terms of the Monetary Reform Laws made it clear that they were in no way to affect debts owed by German nationals to United Nations creditors.

Only Article XV of the Third Monetary Reform Law, United States Military Government Law No. 63, promulgated June 21, 1948, concerned American creditors who wished to accept a conversion ratio of 10 to 1. The Petitioner refused to avail himself of this right until subsequent regulations were enacted permitting him to accept such payment without prejudice to his claim for the remainder of the debt due him.

Petitioner complains of confiscation of his debt by reason of the unreasonable delay in lifting the moratorium on debt repayment by German debtors to American creditors.

Petitioner concedes that the regulation of currency in occupied territory is a permissible exercise of sovereign power, but the confiscation of debt is no part of that power. For centuries it has been acknowledged by the United States and by every civilized nation that such annulment of private rights outrages fundamental principles of justice. *United States v. Percheman*, 32 U. S. 51, 86-87 (1833); *7 Hamilton's Works*, 329, Camillus No. XVIII (1794); *Ware v. Hylton*, 3 Dall. 199, 281 (1796); *Planters' Bank of Tenn.*

---

[1] There was no devaluation. The Deutschemark simply replaced the Reichsmark as the currency of West Germany and the internal value of these two currencies were identical, one with the other. So much the United States, through the Department of State, has already acknowledged. 18 DEPARTMENT OF STATE BULLETIN 836 (JUNE 27, 1948).

The currency conversion was merely a device to thwart high ranking Nazi officials and black marketeers who had managed illicitly to amass and secrete large sums in Reichsmarks. They could not risk detection by presenting their hoards for conversion and so their holdings in Reichsmarks were rendered worthless.

v. Union Bank of La., 83 U. S. 483 (1872); *Williams v. Bruffy*, 96 U. S. 176 (1877); *Hanger v. Abbot*, 73 U. S. 532 (1867).

When in 1961 the Cuban Government suspended the right of American citizens to collect debts owing to them by Cuban nationals, the United States Department of State denounced the exchange controls as a violation of international law. Department of State Memorandum, March 1, 1961, quoted in 56 Am. J. Int. L. 165 (1962).

What is prohibited by the Law of Nations is not countenanced by the Fifth Amendment:

> "The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U. S. 40 at 49 (1960).

While military emergencies may require private rights to give way to the exercise of military powers, the United States is nevertheless required to make full restitution for the sacrifice of its citizens. *Mitchell v. Harmony*, 13 How. 115 (1851); *United States v. Russell*, 13 Wall. 623 (1871).

So much was recognized by the Government of France when through its Military Governor it permitted United Nations creditors to receive repayment of post-war claims against German Nationals on the basis of one Deutschemark for every Reichsmark of the principal of the debt.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ALAN MILES RUBEN
Counsel for Petitioner

September 28, 1964